

# EXHIBIT C

**From:** [Montclare, Paul](#)  
**To:** ["Wolfsohn, David J."](#)  
**Cc:** ["Marandola, Tyler R."](#); [Williams, Matthew](#); [Lichtman, Leo](#); [Nguyen, Elaine](#)  
**Subject:** RE: [EXTERNAL] Re: Phillies V. H/E  
**Date:** Friday, September 25, 2020 12:42:20 PM  
**Attachments:** [Change-Pro Redline - Answer and Counterclaim filed and Amended answer counterclaims -final 9 24 2020\(12520686.pdf](#)  
[FINAL Proposed Amendment.pdf](#)  
[Exhibit A to Counterclaims.pdf](#)

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David,

Attached is a slightly revised redline version of the proposed amended answer and counterclaim we intend to file. Based on our last email exchange, please confirm that it is still The Phillies position that they will not consent to the filing of this amended pleading. If I do not hear back from you today I will assume that you still do not consent to the filling of this amended pleading.

Paul



**Paul D. Montclare | Partner, through his LLP**

T: 917.546.7704 | C: 917-670-0133 | F: (917) 546-7674 | [pdm@msk.com](mailto:pdm@msk.com)

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**From:** Montclare, Paul  
**Sent:** Monday, September 14, 2020 2:56 PM  
**To:** 'Wolfsohn, David J.' <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>  
**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>  
**Subject:** RE: [EXTERNAL] Re: Phillies V. H/E

David,

Putting aside the churlish comments directed at my clients, there is no need to address your flawed characterization of my client's motives for filing an amended counterclaim as you imagine in your first paragraph. You have known for some time now that we would be seeking to amend our counterclaim to address post-termination infringement by your client. This is no surprise to you. In fact, we have even raised this in correspondence with the Court, and in emails between us relating to the end of discovery.

Regarding your second and third paragraph, there is nothing defamatory about this proposed pleading, and we will prove the allegations in our counterclaims. If you make a Rule 12(b)(f) motion we will respond with the basis for our allegations. Notably, for some reason, while you threaten a motion, you have not articulated what parts of the proposed pleading you believe should be stricken

under Rule 12(b)(f). Nor have you indicated, what you contend needs to be pleaded with more definiteness under Rule 12 (e). You simply say: "So amendment will be futile", based on your complaints about the pleading somehow not being definite enough. Please articulate what you believe should be pleaded with more particularity so we can address that, if necessary.

Regarding your last paragraph, my client's infringement claims arise out of the Phillies' post-termination infringements of my clients' Phanatic copyrights. That termination took effect in June, 2020. In the existing action, there are declaratory judgment claims regarding the same Phanatic copyright and termination rights. The proposed amendment addresses the post-termination infringement based on my clients copyright and termination rights. The reality is that the Phillies are now using and exploiting H/E's Phanatic copyright post-termination. That is, and should be part of this case. There has been extensive discovery on these issues already. Indeed, many legal issues regarding the validity of H/E's copyright and termination that have already been explored in discovery, apply to our proposed infringement claims, as does extensive prior discovery relating to the use of P-2 and the post-termination use of derivative works.

At the same time, we too want the issues framed in our pre-motion letter for summary judgment to be teed up now, notwithstanding the counterclaim amendment alleging infringement. A decision on those issues may inform damages and liability issues relating to our infringement claim.

Finally, as I have repeatedly stated, a fair settlement is preferable, if it can be attained. But, it has been weeks now since the parties wanted to begin earnest discussions. My clients sought information that was important to their valuation. You eventually agreed to provide it, and sent a draft NDA. I responded. I am still awaiting a response from you and for the information. When do you think you can provide the information requested? In the meantime, we have no choice but to continue on a litigation footing.

Paul



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**From:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>

**Sent:** Friday, September 11, 2020 12:28 PM

**To:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>  
**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>;  
Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>  
**Subject:** RE: [EXTERNAL] Re: Phillies V. H/E

-EXTERNAL MESSAGE-

Paul,

I do not understand what legitimate reason there could be to amend the answer, other than to get your firm's name or perhaps your clients' names in the press/social media, or perhaps because of some misplaced effort to exert what you perceive to be "leverage" in settlement negotiations.

Moreover, portions of the answer are blatantly false and defamatory, and would be subject to a motion to strike. Fed. R. Civ. P. 12(b)(f).

In the counterclaims, you've added one for infringement. That count would be subject to a motion to dismiss for failure to state a claim (Rule 12(b)(6)) and, in the alternative, for a more definite statement (Rule 12(e)). So amendment would be futile.

In addition, discovery ended 2 months ago, so to the extent you had intended this proposed amendment as a vehicle for delaying resolution of the case, that would be an additional reason to deny a motion for leave to amend. We filed this case over a year ago in the hopes of obtaining the Court's rulings on our positions as soon as possible so that we could be guided accordingly and we would not want any further delay.

There may be other reasons as well.

Very truly yours,

David Wolfsohn

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**From:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>  
**Sent:** Sunday, September 6, 2020 12:05 PM  
**To:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>  
**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>; Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>;  
Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>  
**Subject:** RE: [EXTERNAL] Re: Phillies V. H/E

Please tell me the reasons why you are declining to consent to the amended pleading that I sent you.

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

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**From:** Wolfsohn, David J. <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>  
**Date:** Friday, Sep 04, 2020, 12:14 PM  
**To:** Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)>  
**Cc:** Marandola, Tyler R. <[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>, Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>, Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>, Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>  
**Subject:** [EXTERNAL] Re: Phillies V. H/E

-EXTERNAL MESSAGE-

We do not.

David J. Wolfsohn  
Partner  
Duane Morris LLP  
30 South 17th St.  
Philadelphia, PA 19103-4196

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Sent from phone. Please excuse typos and autocorrect errors.

On Sep 4, 2020, at 10:45 AM, Montclare, Paul <[pdm@msk.com](mailto:pdm@msk.com)> wrote:

David,

Please respond to our inquiry below as to whether you consent to the proposed amended answer and counterclaim that I sent you.

Paul

**<image001.gif>**

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**From:** Montclare, Paul

**Sent:** Thursday, August 27, 2020 1:37 PM

**To:** 'Wolfsohn, David J.' <[DJWolfsohn@duanemorris.com](mailto:DJWolfsohn@duanemorris.com)>; Marandola, Tyler R.

<[TMarandola@duanemorris.com](mailto:TMarandola@duanemorris.com)>

**Cc:** Williams, Matthew <[mxw@msk.com](mailto:mxw@msk.com)>; Lichtman, Leo <[lml@msk.com](mailto:lml@msk.com)>; Nguyen, Elaine <[eln@msk.com](mailto:eln@msk.com)>

**Subject:** Phillies V. H/E

David,

Attached are a proposed amended answer and counterclaim and a redline comparison to the original. Please indicate whether you will consent to this proposed amended pleading.

Paul

**<image001.gif>**

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